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INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL NO. 439

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDEX FREIGHT, INC.

Case No. 32-RC-144041

Employer,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 439

Union/Petitioner.

**TEAMSTERS LOCAL 439'S OPPOSITION
TO EMPLOYER'S REQUEST FOR
SPECIAL PERMISSION TO APPEAL TO
THE REGIONAL DIRECTOR'S DENIAL
OF THE EMPLOYER'S MOTION TO
POSTPONE THE HEARING ON THE
EMPLOYER'S OBJECTIONS TO THE
CONDUCT OF THE ELECTION**

INTRODUCTION

Teamsters Local 439 is in receipt of FedEx Freight, Inc.'s (hereinafter also referred as "Employer") Request for Special Permission to Appeal the Regional Director's Denial of the Employer's Motion to Postpone the upcoming June 8 Hearing on the Employer's Objections to the Election in the above-referenced matter. The Employer seeks a postponement until resolution of charges filed by Local 439. Teamsters Local 439 opposes the Request and, as previously noted, the Motion to Postpone Hearing. Prior to addressing FedEx Freight Inc.'s Request for Special Permission, the Union will set forth a brief response to the Employer's contentions that Postponement is appropriate or necessary.

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1 **POSTPONEMENT OF THE HEARING IS NOT NECESSARY OR WARRANTED**

2 First, the Employer's contention that it cannot prepare its case in chief because it may be
3 charged with further unlawful conduct is not an appropriate basis to postpone the Hearing. The
4 Employer's fears will only materialize if it violates the law. Accordingly, whether or not the hearing
5 is held in June, July or August this issue will remain. In other words, if the Employer violates the law
6 2 months from now, it will still run the risk of being charged by the Union as engaging in unfair labor
7 practices. The Union does not see how, in any way, a postponement changes this. What does
8 address this concern is the Employer following the law.

9 Second, the Employer's concern that facts may develop in the upcoming Hearing that could
10 impact the pending charges is also not a basis for postponement. Ultimately, the facts that the
11 Employer is concerned may be revealed should be developed in the investigation and processing of
12 the charges. Regardless, it is not a basis to postpone the hearing because the Employer has concerns
13 that facts may come out during the Hearing demonstrating that it engaged in unfair practices.

14 Third, the Employer's contention that the Hearing officer may be biased its baseless and
15 without any factual support. The Board's Rules have procedures setting forth the role and duties of
16 the Hearing officer and there is no evidence that the Hearing officer will deviate from those rules.
17 Again, there is no basis for a postponement.

18 In sum, as the Regional Director correctly found, the upcoming Hearing should not be
19 continued based on the Employer's baseless contentions.

20 **THE EMPLOYER'S REQUEST FOR SPECIAL PERMISSION SHOULD BE DENIED**

21 Given that there is no basis for postponement, the Request for Special Permission should be
22 denied. The Employer claims that its Request for Special Permission should be granted under section
23 102.67(c)(1), (3) and (4) of the NLRB Rules. However, the Employer has failed to show how either
24 of those bases apply.

25 First, the Employer has not cited to any case law or basis to support its proposition that it is
26 prejudicial to hear its Objections when there are pending charges, particularly when the alleged
27 prejudice is its fear that it will be charged with further unfair practices. As noted above, to resolve
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1 that concern, the Employer need only follow the law. Thus, there is no question of law or policy that
2 necessitates review, nor did the Regional Director's denial result in prejudicial error. Second, and
3 similarly, given that the Employer's contentions are baseless, there are no compelling reasons here to
4 further delay this matter.

5 In sum, during the scheduling of this Hearing, FedEx Freight Inc. attempted to push the
6 Hearing out and the Region denied such a request. The Region denied it again on June 2 when
7 FedEx Freight, Inc. renewed its request. FedEx Freight, Inc. should not get another opportunity to
8 needlessly delay this matter. Simply put, after overwhelmingly voting in the Union, 33-12, the
9 employees at FedEx Freight, Inc. should not have to wait any longer for the Employer's unfounded
10 Objections to be heard and dismissed.

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12 Dated: June 3, 2015

BEESON, TAYER & BODINE, APC

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14 By: /S/
15 COSTA KERESTENZIS
16 Attorneys for TEAMSTERS LOCAL 439
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I declare that I am employed in the County of Sacramento, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 520 Capitol Mall, Suite 300, Sacramento, CA 95814-4714. On this day, I served the foregoing Document(s):

**TEAMSTERS LOCAL 439'S OPPOSITION TO EMPLOYER'S REQUEST FOR SPECIAL
PERMISSION TO APPEAL TO THE REGIONAL DIRECTOR'S DENIAL OF THE
EMPLOYER'S MOTION TO POSTPONE THE HEARING ON THE EMPLOYER'S
OBJECTIONS TO THE CONDUCT OF THE ELECTION**

☐ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Sacramento, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.


☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in Sacramento, California, on this date, June 3, 2015.


Cynthia Belcher
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